IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4204 OF 2007
To
FIRST APPEAL No. 4210 OF 2007
with
CIVIL APPLICATIONS NO.10964 TO 10970 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A. L. DAVE

HONOURABLE MR.JUSTICE S. D. DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION.

Versus

RAJENDRABHAI CHANDULAL PATHAK & Others.

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Appearance :
MRS VASAVDATTA BHATT for the Appellant.
MR PH PATHAK for the respondents.

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CORAM : HONOURABLE MR.JUSTICE A. L. DAVE

and

HONOURABLE MR.JUSTICE S. D.DAVE

Date : 27/09/2007

ORAL JUDGMENT: (Per : A. L. DAVE, J.)

1. This group of appeals arises out of judgments and awards rendered by Motor Accident Claims Tribunal (Aux.), Ahmedabad City, in Motor Accident Claim Petition No.882 of 1998 and other allied matters, arising out of a vehicular accident that occurred on 05.12.1997, involving Maruti Car GJ-1-AR-4696 and S.T. Bus No.GJ-18-1706. The alleged accident occurred on Godhra-Kaalol Highway between Delol and Khadki. The two vehicles were travelling in direction opposite to each other and collided with each other. Maruti Car was driven by Arivindbhai Popatlal Mehta, who died in the incident and whose heirs have preferred Motor Accident Claim Petition No.1620 of 1998 (First Appeal No.4205 of 2007). In the said accident, besides Arvindbhai Mehta, two other persons also lost their lives, one was minor Jesal R. Pathak, whose mother Dakshaben R. Pathak preferred Motor Accident Claim Petition No.884 of 1998 (First Appeal No.4207 of 2007) and the other was Renu, for whose death, Motor Accident Claim Petition No.887 of 1998 (First Appeal No.4210 of 2007) was preferred.

2. The case of the claimants was that the car was being driven by deceased-Arvindbhai at a moderate speed on the correct side of the road. The bus, which was coming from opposite

direction at an excessive speed, came to its wrong side and dashed against the car causing the mishap. The bus was driven in a rash and negligent manner by its driver and was owned by Gujarat State Road Transport Corporation, the appellant herein.

3. After considering the evidence led by the parties, the Tribunal found that the driver of the bus was solely responsible for the accident and, therefore, held the appellant to be liable to pay compensation to the claimants.

4. Learned Advocate, Ms. Vasavdatta Bhatt, for the appellant, vehemently, assailed the findings of the Tribunal and submitted that the driver of the Maruti Car ought to have been held responsible to some extent for the accident. However, we are unable to agree to her submission since we find that the Tribunal has taken into consideration all relevant aspects. It has come in evidence of Rajendrabhai Chandulal Pathak (Exhibit 30), who was travelling in the car, that the car was being driven by Arvindbhai Popatlal Mehta at a moderate speed on the left side of the road. It has also come in evidence that the road near the place of accident is straight. The bus was coming from opposite direction and there was no vehicle ahead of the bus.

4.1 The appellant examined driver-Ranchhodbhai Nathabhai at Exhibit 50. According to him, he was driving the bus from Modasa to Pavagadh, which was an Express Bus. The road is single strip road where two vehicles can pass. According to the driver of the bus, the Maruti Car was being driven behind a truck

and all of a sudden, the car driver tried to overtake the truck and came on the wrong side. He, therefore, took his bus to further left and stopped but the Maruti Car dashed against the bus on the wrong side, i.e. on the left bumper side of the bus. During cross-examination, he stated that, after the accident, he and his conductor went to the police station and lodged an F. I. R. He also admitted that, he came to be charge sheeted for the accident before learned Judicial Magistrate, First Class, Kaalol and the case is still pending. If the F. I. R. lodged by the driver of the bus, which is produced on record at Exhibit 39, is seen, he has stated that the Maruti Car came from opposite direction, i.e. from Kaalol side; that he was driving his bus at full speed; and that the right front side of the bus dashed against the Maruti Car resulting into the accident.

4.2 It is clear from the above evidence, therefore, that the version that is given by the driver in his deposition is far from the version that he had given immediately after the accident in the F.I.R. It is clear from the F.I.R. that the bus was being driven at a high speed and that it dashed against the car rather than the car coming on wrong side and dashed against the bus on its left side. Further, the S.T. driver is being prosecuted before learned Judicial Magistrate, First Class, Kaalol. We, therefore, find no error on the part of the Tribunal in holding the driver of the S.T. Bus solely responsible for the accident.

5. Learned Advocate, Ms. Vasavdatta Bhatt, submitted that, on quantum aspect, she assails the judgment only on multiplier aspect. According to her, the assessment of

compensation by the Tribunal is otherwise just and reasonable, but the multiplier adopted is on higher side in each case in view of the decision in the case of ***Tamil Nadu State Transport Corporation Limited v. S. Rajapriya and Others, (2005) 6 SCC 236***.

6. Learned Advocate, Mr. Pathak, for the respondent submitted that the multiplier adopted by the Tribunal is just, legal and proper and was in accordance with the judicial pronouncements prevailing at the time of pronouncement of the judgment by the Tribunal. According to him, therefore, the judgment and award may not be interfered with.

7. We propose to take up each appeal individually to examine whether the quantum awarded and multiplier adopted are just, legal and proper or not and whether exercise of appellate jurisdiction is necessary.

8. First Appeal No.4204 of 2007 is preferred against the judgment and award rendered in Motor Accident Claim Petition No.882 of 1998. The said claim petition was preferred by Rajendrabhai Pathak for the injuries sustained by him. The injury was assessed by the doctor and it was agreed to be 12% in respect body as a whole by parties before the Tribunal. He is an advocate by profession, aged 39 years. He claimed compensation of Rs.2 lakh. According to the claimant, his income was Rs.6000/- per month. The Tribunal, however, assessed his income at Rs.5000/- per month and assessed his loss of income at Rs.600/- per month, considering 12% disability. The loss of income per annum,

therefore, was assessed at Rs.7200/- and the Tribunal adopted a multiplier of 15 considering the age of the claimant and awarded Rs.1,08,000/- towards future economic loss. The claimant could not attend to his vocation for nearly one year and, therefore, actual loss of income was assessed by the Tribunal at Rs.60,000/-. The Tribunal awarded a compensation of Rs.15,000/- towards pain, shock and suffering, Rs.10,000/- towards medical expenses and Rs.5,000/- towards attendant charges. The Tribunal, thus, awarded a total amount of Rs.1,98,000/- by way of compensation against the claim of Rs.2 lakh and awarded proportionate costs and interest at the rate of 9% from the date of filing of the petition till 31st December, 2000 and at the rate of 6% per annum from 1.1.2001 till realisation.

9. Keeping in light the decision relied upon by learned Advocate for the appellant, rendered in ***Tamil Nadu State Transport Corporation Limited (supra)***, in our view, a multiplier of 13 would be reasonable to be adopted.

9.1 So far as income aspect is concerned, the Tribunal has assessed the income of the claimant, a practising Advocate, at Rs.5000/- per month, which is reasonable. While computing future economic loss, 12% disability is considered and it is assessed at Rs.600/- per month which, in our opinion, is just and reasonable and no interference is called for. Therefore, considering multiplier of 13, with future economic loss at Rs.7200/- per annum, the claimant would be entitled to a compensation of Rs.93,600/- under that head.

9.2 Considering the nature of injuries and evidence on record, the Tribunal was justified in assessing actual loss of income at Rs.60,000/-. The compensation awarded by the Tribunal under the head of pain, shock and suffering, medical expenses and attendant charges at the rate of Rs.15,000/-, Rs.10,000/ and Rs.5,000/-, respectively, is also found to be just, legal and proper not calling for any interference.

9.3 Resultantly, First Appeal No.4204 of 2007 will have to be partly allowed by reducing the multiplier from 15 to 13 with proportionate decree in the quantum of compensation under the head of future economic loss from Rs.1,08,000/- to Rs.93,600/-. The total amount of compensation, therefore, would be Rs.1,83,600/- with proportionate costs and interest, as awarded by the Tribunal.

10. Coming to First Appeal No.4205 of 2007, the Claim Petition was preferred by Varshaben, widow of Arvindbhai Mehta, who was driving the Maruti Car. We have upheld the view of the Tribunal that there is no negligence on the part of the deceased in driving the car and the accident was attributable only to negligence on part of the driver of the bus.

10.1 Therefore, coming to quantum aspect, the claimants had claimed compensation of Rs.18,00,000/- and the Tribunal awarded Rs.7, 15,000/-. The income of the deceased was claimed to be Rs.20,000/- per month. However, the Tribunal fixed the income at

Rs.6,000/- per month, considering the evidence on record. Deducting 1/3rd therefrom, the Tribunal assessed dependency loss of the claimants at Rs.4000/- per month and Rs.48,000/- per annum. The deceased was aged 40 years. The Tribunal adopted a multiplier of 14. In our view, considering the decision in the case of ***Tamil Nadu State Transport Corporation Limited (supra)***, a multiplier of 13 could have been reasonably adopted, which would bring the dependency loss at Rs.6,24,000/-. The Tribunal also awarded a compensation of Rs.40,000/- towards loss of consortium, loss to estate, loss of love and affection, etc., which, in our view, is reasonable and call for no interference. Similarly, the Tribunal awarded Rs.3,000/- towards funeral expenses, which is also reasonable.

10.2 The appeal, therefore, deserves to be partly allowed. The claimants, would be entitled to a total amount of Rs.6,67,000/- by way of compensation as against Rs.7,15,000/- awarded by the Tribunal with proportionate costs and interest, as awarded by the Tribunal.

11. So far as First Appeal No.4206 of 2007 is concerned, the claimant-Dakshaben Pathak was the occupant of the car. She was working as Interior Designer and claimed Rs.4 lakh by way of compensation for the injuries sustained by her medically assessed at 28% in respect of body as a whole, by consent of parties (Exhibit 54). The Tribunal assessed monthly income at Rs.4000/- and future economic loss at Rs.1120/- per month. The Tribunal adopted a multiplier of 15. However, the age of claimant, as

indicated in the cause title, is 39 and, therefore, a multiplier of 13 can reasonably be adopted considering the decision in the case of ***Tamil Nadu State Transport Corporation Limited (supra).*** The claimant, therefore, would be entitled to a compensation of Rs.1,74,720/- under the head of future economic loss as against Rs.2,01,600/-, assessed by the Tribunal. The Tribunal has found that the applicant was attending to her avocation because of injuries on her wrist and hip for about a year and has assessed actual loss of income at Rs.48,000/-. Considering the evidence on record and the nature of injuries, this assessment is reasonable in our view. Compensation of Rs.15,000/- under the head of pain, shock and suffering, Rs.20,000/- for medical expenses and Rs.10,000/ for attendant charges is also reasonable and backed by evidence and no interference is called for in the compensation awarded under those heads.

11.1 The appeal, therefore, deserves to be partly allowed. The claimant would be entitled to a compensation of Rs.2,57,720/- with proportionate costs and interest, as awarded by the Tribunal.

12. Coming to First Appeal No.4207 of 2007, the claimant is the mother of minor Jesal, aged 7, who died in the accident. An amount of Rs.2 lakh is awarded by the Tribunal, as claimed by the claimant. The Tribunal has adopted a notional income of Rs.15,000/- per annum and adopting a multiplier of 15, concluded that the claimant would be entitled to Rs.2,25,000/- as compensation. However, as the claim was limited to Rs.2 lakh, the total claimed amount came to be awarded by the Tribunal. It is

contended by learned Advocate, Ms. Vasavdatta Bhatt, that out of the notional income adopted by the Tribunal, 1/3rd ought to have been deducted towards expenditure on self of the deceased and adopting an a appropriate multiplier, a reasonable amount ought to have been awarded.

12.1 In our view, no error is committed by the Tribunal in adopting a notional income of Rs.15,000/- per annum. Considering the age of minor son-Jesal of the claimant (7 years) and considering the age of the claimant 39 years, in our view, the Tribunal erred in adopting a multiplier of 15. It cannot be overlooked that the minor son would have started earning earliest at the age of 18. Therefore, till that stage, the minor would have been dependent upon the claimant rather than the claimant being depending on the minor-deceased. If it is assessed that the deceased would have started earning at the age of 18, the age of the claimant, at that time, would have been 50 years. Considering imponderables, a multiplier of 6 would be reasonable. An amount equivalent to 1/3rd, thus, will have to deducted from the income of the deceased to assess dependency loss. That would bring the amount of dependency loss to Rs.10,000/- per annum and adopting a multiplier of 6, the claimant would be entitled to an amount of Rs.60,000/- as compensation under the head of loss of dependency. Added to this would be compensation under the head of funeral expenses, which could be assessed at Rs.5000/- and conventional amount of loss of life at Rs.20,000/-. Therefore, the claimant would be entitled to a total amount of compensation of Rs.85,000/- as under:-

(1)	Dependency loss.	Rs. 60,000/-
(2)	Funeral expenses.	Rs. 5,000/-
(3)	Conventional amount towards loss of life.	Rs. 20,000/-
	Total ...	Rs. 85,000/-

In our view, the Tribunal, therefore, erred in awarding compensation of Rs.2 lakh. The appeal, therefore, will have to be allowed in part. The claimant would be entitled to Rs.85,000/- as compensation, as discussed above, with proportionate costs and interest as awarded by the Tribunal.

13. Coming to First Appeal No.4208 of 2007, claimant-Biren Sarabhai Doshi claimed an amount of Rs.50,000/- as compensation for which injuries sustained by him in the accident. He was a passenger in the car. He suffered 7.5% permanent disability in respect of body as a whole. It is found that he was required to be on leave from 5.12.1997 to 12.3.1998. He was working as Assistant Engineer with GIDC, Ankleshwar, and was earning Rs.6195/- per month by way of salary. After deductions, his net take home salary was Rs.2810/ (Exhibit 51). The claimant was given treatment in the hospital and was discharged on the same day. According to him, he spent Rs.5,000/- on medicine, special diet, transportation charges, etc. The Tribunal awarded compensation of Rs.35,000/ as a lump sum under all heads. In our view, the amount of compensation seems to be reasonable and no

interference is called for. The appeal is, therefore, dismissed.

14. First Appeal No.4209 of 2007 is preferred by Ushaben Biren Doshi for the injuries sustained by her. The injury has resulted into permanent partial disability to the extent of 7.5% in respect of body as a whole. She is a housewife and her income is assessed, notionally, at Rs.1500/- per month for her personal might and, therefore, economic loss is assessed at Rs.112.50 ps. per month and Rs.1350/- per annum. The age of the claimant was 32 years and the Tribunal adopted a multiplier of 16 and awarded Rs.21,600/- towards future economic loss besides compensation of Rs.10,000/- for pain, shock and suffering and Rs.4500/- for attendant charges.

14.1 In light of decision in the case of ***Tamil Nadu State Transport Corporation Ltd. (supra)***, in our view, the Tribunal ought to have adopted a multiplier of 15 rather than 16, which would reduce the amount of compensation under the head of future economic loss by Rs.1350/-. In our view, if the evidence is seen, claimant-Ushaben suffered fracture of her right hand besides injury on other parts of the body. She was admitted in Bhailal Amin General Hospital, Vadodara and was discharged from the hospital on 12.12.1997. Differently put, she was in hospital for about a week.

14.2 We notice that the Tribunal has awarded Rs.5000/- towards medical expenses, special diet, etc., which is quite reasonable. The compensation under other heads also seems to be

quite reasonable. The appeal, therefore, will have to be allowed in part. The claimant would be entitled to compensation of Rs. computed as under :-

(1)	Rs.112.50 ps. per month, being 7.5% (disability) of Rs.1500/- per month (notional income), which would bring annual future economic loss to Rs.1350/-. Adopting a multiplier of 15, the amount of compensation awardable to the claimant under the head of future economic loss	=	Rs. 20,250/-
(2)	Compensation towards pain, shock and suffering.		Rs. 10,000/-
(3)	Medical expenses.		Rs. 5,000/-
(4)	Attendant charges.		Rs. 4,500/-
			Rs. 39,500/-

The appeal is, therefore, partly allowed. The claimant would be entitled to Rs.39,500/- with costs and interest as awarded by the Tribunal.

15. Now, come to First Appeal No.4210 of 2007, claimant-Biren Sarabhai Doshi has claimed compensation of Rs.2 lakh for death of his minor daughter-Renu, aged 8 years. The Tribunal has adopted her notional income at Rs.15,000/- per annum and has adopted a multiplier of 15.

15.1 In our view, the Tribunal has erred in awarding total

compensation of Rs.2 lakh. In the first instance, the Tribunal ought to have deducted 1/3rd amount from the notional income, which would bring the dependency loss per annum to Rs.10,000/-. The age of the claimant was 38 years. The deceased was aged 8 years. She could have started earning at the most on becoming major. Till then, she would be dependent upon the claimant himself. By the time, the minor would have started earning, the claimant would have been 48 years of age and, therefore, a multiplier of 10 would be a reasonable multiplier to be adopted. This would bring the compensation under the head of loss of dependency to Rs.10,000/- x 10 = Rs.1,00,000/-. Added to this would be Rs.20,000/- as compensation for loss of life, estate, etc. and Rs.5,000/- towards funeral expenses. The total entitlement of the claimant, therefore, would be Rs.1,25,000/-.

15.2 The appeal is, therefore, partly allowed. The claimant is, therefore, entitled to a compensation of Rs.1,25,000/- plus costs and interest as awarded by the Tribunal.

16. Orders accordingly.

17. In view of the disposal of First Appeals, no order on the Civil Applications.

[A. L. DAVE, J.]

[S. D. DAVE, J.]

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